

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

AUGUST 13, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Miller & Kreisel Sound Corporation

Serial No. 75/190,781

Henry Klein of Ladas & Parry for Miller & Kreisel Sound Corporation.

David H. Stine, Trademark Examining Attorney, Law Office 103 (Michael A. Szoke, Acting Managing Attorney).

Before Hohein, Wendel and Bucher, Administrative Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Miller & Kreisel Sound Corporation has filed an application to register the mark TRIPOLE for "audio sound systems, namely, loudspeakers, sound mixers and multichannel sound reproductions equipment."¹

¹ Serial No. 75/190,781, filed October 31, 1996, claiming first use dates of December 27, 1995.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that the mark is merely descriptive. Applicant and the Examining Attorney have filed briefs but no oral hearing was requested.

The Examining Attorney argues that the terminology "tripole" aptly describes the "salient operational characteristic of applicant's loudspeaker systems," in that "applicant's 'tripole operation' involves connection of a third terminal, using a jumper wire, to produce surround sound effects." [Brief, p. 2]. He argues that to those in the relevant trade, the terms "bipole" and "dipole" are standard terminology and the term "tripole," even if coined as applicant claims, would be readily understood as describing applicant's three-terminal hookup as opposed to the standard two-terminal hookup. He contends that the term is self-explanatory, pointing out that on the specimens themselves the wiring instructions printed thereon use the language "FOR THX² (DIPOLE) OPERATION: remove jumper between terminals 3 and 4" and "FOR TRIPOLE OPERATION: install jumper between terminals 3 and 4." As additional evidence of the descriptive nature of the term, the Examining Attorney has submitted an excerpt of a

Lexis/Nexis database article in which "at least one trade source found the term 'tripole' adequately descriptive to be used in reference to the operating characteristics of applicant's goods, without extensive additional explanation." [Brief p. 3]. In this excerpt, the author, in discussing applicant's goods, first refers to the surround speaker as "M&K's SS-150 'tripole'," but later in his description of the speaker makes general references to the "tripole design," the ability to switch between "dipole and tripole modes," and the difference between the "dipole or tripole operation."

Applicant argues that consumers would have to follow a multi-stage reasoning process to go from associating "bipole" or "dipole," terms long used to describe features which are in fact present in applicant's goods, with "tripole," applicant's coined term for its new enhancement which allows users to elect either dipole sound or surround sound coverage. Applicant insists that its mark TRIPOLE is simply "playing on the lingo used in the acoustics field" and does not immediately convey any specific information with respect to the goods themselves.

Applicant further contends that the Examining Attorney is operating on inaccurate presumptions; that its speakers

² A trademark of Lucasfilm Ltd., the licensor of applicant.

do not have three terminals; that "dipole" and "bipole" do not relate to the use of two terminals to connect speakers to a sound system or in any other way to the manner of connection, but rather the term "dipole" relates to the magnets in applicant's speakers, which by definition have two poles, a north and a south pole, and to the magnetic field produced by the drive elements, which also have two poles; and that a magnet with three poles is a scientific impossibility. Applicant argues that the terms "bipole" and "dipole" relate only to the use of magnetic fields within a speaker and that speakers are either "bipole" or "dipole" depending on the acoustical phases of their drive elements, one being "in-phase" and the other "out-phase".

Applicant states that the surround sound feature of its goods is created by radiating sound simultaneously from a dipole speaker and a direct radiator. There is no third terminal; instead, the insertion of the jumper wire allows the speaker to use the direct radiator to achieve the surround sound effect. Applicant further argues that its use of the term TRIPOLE in its specimens is strictly in reference to its own goods and that the article relied upon by the Examining Attorney is also in reference to applicant's own goods, albeit with some incorrect usage of

the term "tripole" by a journalist not well versed in proper trademark use.

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic, purpose, function, or feature of the goods with which it is being used. Whether or not a term is merely descriptive is not determined in the abstract, but in relation to the goods or services for which registration is being sought. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978).

In the present case, we believe that applicant has raised doubt with respect to the accuracy of the Examining Attorney's equating "dipole" operation with two terminals and "tripole" operation with three terminals. There are no definitions or other forms of evidence of record to support this assumption. Moreover, it is readily apparent that the surround sound effect which is the "salient" feature of applicant's goods is created by the activation of the direct radiator by means of a jumper between terminals 3 and 4, not by any connection of outside equipment with a third terminal. Even though applicant, in its specimens, refers to "TRIPOLE OPERATION," we see no reason why this is not a reference to applicant's specific system, rather than

to a generally recognized mode of operation.³ Finally, we decline to rely upon a single trade article about applicant's own goods, in which the term "tripole" is used in only some instances in a non-trademark manner, to demonstrate general recognition of the term in the industry.

Consequently, because we have doubt as to whether the term TRIPOLE is merely descriptive of applicant's goods, we find it appropriate to resolve this doubt in favor of applicant, since any person who believes that he would be damaged by the registration of the mark will have the opportunity to file an opposition thereto. See *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987); *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972).

³ We note that, by contrast, applicant uses the trademark THX in conjunction with the "dipole" operation, as the distinguishing source indicator.

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Decision: The refusal to register under Section
2(e)(1) is reversed.

G. D. Hohein

H. R. Wendel

D. E. Bucher
Trademark Administrative Judges,
Trademark Trial and Appeal Board

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